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10 UNITED STATES DISTRICT COURT

11 FOR DISTRICT OF NORTHERN CALIFORNIA

12 VLADIMIR A. BALAREZO, ET AL.,
 13 individually and on behalf of others similarly
 situated

14 Plaintiff,
 15 vs.

16 NTH CONNECT TELECOM INC., AND
 STEVEN CHEN,

17 Defendants

18 Case No.:C07-05243 JF

**DECLARATION OF OSMIN AVILA IN
 SUPPORT OF PLAINTIFFS' MOTION
 FOR APPROVAL OF HOFFMANN-LA
 ROCHE NOTICE**

Date: April 11, 2008
 Time: 9:00 AM
 Judge: Jeremy Fogel

19 I, the undersigned, declare as follows:

20 1. I am over 18 years old. I have personal knowledge of the matters stated herein. If
 called upon to testify before this Court, I would and could do so to the same effect.

21 2. I was employed by Defendant Nth Connect Telecom Inc. ("Nth Connect") as an
 Installation Technician approximately from 2005 to 2007.

22 3. My duties as an Installation Technician at the Nth Connect were to install cable
 equipments for Comcast at the customers' houses as dispatched at various specified time periods
 during the day.

1 4. I was compensated by piece for the work I performed. Specifically, I was
 2 compensated a specific rate for each installation I had completed. The piece rate would vary,
 3 depending on the nature of the particular job I was dispatched to perform. At the end of each pay
 4 period, Nth Connect would give me an earnings statement that summarized all the work I
 5 performed during the pay period, and the amount I earned for that pay period. Exhibit 1 hereto is
 6 a true and accurate copy of one earning statement issued to me for the period from December 24,
 7 2006 to January 6, 2007. As demonstrated by Exhibit 1, the amount I earned bore no relation to
 8 the hours I worked during the pay period.

9 5. I was never paid according to an agreed-upon hourly rate.

10 6. My pay was never based on the number of hours I worked.

11 7. For the early part of my employment with Nth Connect, I was treated as an
 12 “independent contractor,” and was paid on 1099 not subject to tax withholdings. Sometime in
 13 2006, Nth Connect started putting me and other Installation Technicians on payroll. In
 14 processing the payroll, Nth Connect would arbitrarily assign me an artificial hourly rate at or
 15 near the minimum wage, and reverse engineer the payroll calculation using the number of hours
 16 shown on my daily time cards. As result, my payroll statement would show that I was paid an
 17 hourly rate near the minimum wage for regular hours worked within 8 hours per day or 40 hours
 18 per week, and time and one-half of that falsified hourly rate for hours worked in excess of 8
 19 hours per day or 40 hours per week. Such reverse-engineered hourly earnings for a particular
 20 pay period would inevitably differ from the amount I actually earned based on the installation
 21 work I performed during that pay period. Nth Connect would then list an extra amount as
 22 “bonus”, “gas reimbursements”, “expenses” and “tools”, etc. to make up the difference so that
 23 the gross amount I received from Nth Connect per pay period as reflected on the payroll
 24 statement for that period would always confirm with the amount I earned based on the
 25 installation work performed, while in reality, I was not paid any amount in addition to the
 earnings from installations based on piece rate. Exhibit 2 hereto is a true and correct copy of

payroll statement for the period from December 24, 2006 to January 6, 2007, which was reverse-engineered to make it appear that I was paid by an hourly rate for regular hours and one and one-half of that hourly rate for overtime hours worked.

8. Based on my personal knowledge of Nth Connect's operations that I gained during my employment with Nth Connect, I know that none of the Techs received overtime pay premiums. I often spoke with other Techs during my tenure about our terms and conditions of employment. From my own experience, what I learned from my managers, I learned that Nth Connect observed a uniform policy applicable to all Techs of paying only piece rate earnings from the installations performed despite that Techs worked substantial overtime hours every week.

I declare under penalties of perjury under the laws of the United States that the foregoing is true and accurate.

Dated: March 6, 2008

By: /s/ Osmin Avila
Osmin Avila

Comcast South Bay Broadband Installation

Bi-Weekly Payout

12/24	to	1/6
		0

	\$736.25
Deductions	\$0.00
Total	\$736.25

Tech Name: Osmin Avila

San Jose

San Jose														Total	Total Bi-Week	First week	Second week	Payroll		
		Week end			12/30			Week end			1/6			Total	Total Bi-Week	First week	Second week	Payroll		
		12/24	12/25	12/26	12/27	12/28	12/29	12/30	12/31	1/1	1/2	1/3	1/4	1/5	1/6	Total	Total Bi-Week	First week	Second week	Payroll
Aerial New Connect	NAH	\$23.00						0							0	0	0.00	0.00	0.00	
UG New Connect	NUH	\$18.00						0							0	0	0.00	0.00	0.00	
MDU New Connect	NLB	\$18.00						0							0	0	0.00	0.00	0.00	
Connect Existing A/O	EO1	\$4.50						0							0	0	0.00	0.00	0.00	
Aerial Same Trip A/O	AO1	\$9.00					2	2						1	1	3	18.00	9.00	27.00	
UG Same Trip A/O	AO1	\$9.00						0		1				4	5	5	0.00	45.00	45.00	
MDU Same Trip A/O	AO1	\$9.00						0						0	0	0	0.00	0.00	0.00	
Additional outlet W/wallfish	WFI	\$27.00						0						0	0	0	0.00	0.00	0.00	
Separate Trip A/O	ASU/ ASW	\$17.00						0						0	0	0	0.00	0.00	0.00	
Service Tier Change	STC	\$7.00						0					2	1	3	3	0.00	21.00	21.00	
Additional Digital Box/Upgrade	ADI	\$5.00						1	3	4	1				1	5	20.00	5.00	25.00	
Cable Card Installs	CC1	\$7.50							0					0	0	0	0.00	0.00	0.00	
Remove Drop (Video, H S I , Telephony)	RED	\$10.00							0					0	0	0	0.00	0.00	0.00	
Aerial/UG/MDU Drop Replacement	RPD	\$10.00				2			2	1				1	3	3	20.00	10.00	30.00	
Conduit Push (Video, H S I , Telephony)	CON	\$10.00						0						0	0	0	0.00	0.00	0.00	
Video Reconnect	REH	\$18.25						0					1	1	2	2	0.00	36.50	36.50	
Reconnect MDU	RIB	\$18.25			1		1	2					1	1	3	3	36.50	18.25	54.75	
Make Hot Tap	MHT	\$8.00						0					0	0	0	0	0.00	0.00	0.00	
Disco	DXS	\$6.00						0					0	0	0	0	0.00	0.00	0.00	
Disco W/Equipment	DXE	\$11.00						0					0	0	0	0	0.00	0.00	0.00	
Satellite Dish Remove	SAL	\$7.00						0					0	0	0	0	0.00	0.00	0.00	
Self Installation Kit	SKI	\$3.00						0					1	1	1	1	0.00	3.00	3.00	
Troubleshoot Non-Responding DCT/DVR	TNR	\$20.00						0					0	0	0	0	0.00	0.00	0.00	
Separate DCT Up Grade	SDB	\$12.00				2		2	2				2	1	5	7	24.00	60.00	84.00	
UG Drop Bury								0					0	0	0	0	0.00	0.00	0.00	
UG Drop Bury - Conduit W/O Construction								0					0	0	0	0	0.00	0.00	0.00	
UG Drop Bury - W/Construction								0					0	0	0	0	0.00	0.00	0.00	
New C.H.S.I Premium	PNC	\$50.00						0					0	0	0	0	0.00	0.00	0.00	
Reconnect C.H.S.I Premium	PRC	\$40.00			1		1	1	3				1	1	1	4	120.00	40.00	160.00	
H.S.I Reconnect W/Home Networking	INC. W/WL-S	\$63.25						0					0	0	0	0	0.00	0.00	0.00	
H.S.I Reconnect W/Home Networking (MDU)	INC. W/WL-S	\$58.25						0					0	0	0	0	0.00	0.00	0.00	
H.S.I New W/Home Networking	INC. W/WL-S	\$80.00						0					0	0	0	0	0.00	0.00	0.00	
H.S.I New W/Home Networking (MDU)	INC. W/WL-S	\$75.00						0					0	0	0	0	0.00	0.00	0.00	
Combo-Premium New Connect	NVH	\$60.00						0					0	0	0	0	0.00	0.00	0.00	
Combo-Premium New Connect (MDU)	NVH	\$55.00						0					0	0	0	0	0.00	0.00	0.00	
Combo-Premium Reconnect	RVH	\$50.00					1	2	3	1			1	2	5	150.00	100.00	250.00		
Combo-Premium Reconnect (MDU)	RVH	\$50.00						0					0	0	0	0	0.00	0.00	0.00	
Home Networking (1-5 Computers)	HN1+	\$14.00						0					0	0	0	0	0.00	0.00	0.00	
CDV NEW CONNECT	CNC	\$53.00						0					0	0	0	0	0.00	0.00	0.00	
CDV RECONNECT	CRC	\$40.00			2		4	1	3	4			8	12	160.00	320.00	480.00			
TELEPHONE LINE	TEL	\$9.00						0	1	2			3	3	3	3	0.00	27.00	27.00	
RECONFIGURE PHONE	RPJ	\$4.50				3	3		4				4	7	13.50	18.00	31.50			
VERIFYING CUSTOMER ALARM	VCA	\$6.75						0					0	0	0	0	0.00	0.00	0.00	
DUAL INSTALL - NEW VIDEO AND CDV (SDU)	NVP	\$62.50						0					0	0	0	0	0.00	0.00	0.00	
DUAL INSTALL - NEW VIDEO AND CDV (MDU)	NVP	\$55.00						0					0	0	0	0	0.00	0.00	0.00	
DUAL INSTALL - NEW HSI AND CDV (SDU)	NHP	\$70.00						0					0	0	0	0	0.00	0.00	0.00	
DUAL INSTALL - NEW HSI AND CDV (MDU)	NHP	\$65.00						0					0	0	0	0	0.00	0.00	0.00	
DUAL INSTALL - RECONNECT VIDEO AND CDV (SDU)	RVP	\$50.00						0					0	0	0	0	0.00	0.00	0.00	
DUAL INSTALL - RECONNECT VIDEO AND CDV (MDU)	RVP	\$50.00						0					0	0	0	0	0.00	0.00	0.00	
TRIPLE INSTALL - NEW VIDEO, HSI AND CDV (SDU)	RHP	\$55.00			1		1	2		1			1	3	110.00	55.00	165.00			
TRIPLE INSTALL - NEW VIDEO, HSI AND CDV (MDU)	RHP	\$55.00						0					0	0	0	0	0.00	0.00	0.00	
TRIPLE INSTALL - RECONNECT VIDEO, HSI AND CDV (SDU)	NTC	\$80.00						0					0	0	0	0	0.00	0.00	0.00	
TRIPLE INSTALL - RECONNECT VIDEO, HSI AND CDV (MDU)	NTC	\$75.00						0					0	0	0	0	0.00	0.00	0.00	
TRIPLE INSTALL - RECONNECT VIDEO, HSI AND CDV (SDU)	RTC	\$65.00			1		1	2					0	2	130.00	0.00	130.00			
TRIPLE INSTALL - RECONNECT VIDEO, HSI AND CDV (MDU)	RTC	\$65.00						1	1				0	1	65.00	0.00	65.00			

69	867.00	767.75	1,634.75
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O3A

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Earnings Statement

NTH CONNECT TELECOM, INC
1445 KOLL CIRCLE
SUITE 107
SAN JOSE, CA 95112

Pay Period: 12/24/2006 to 1/06/2007

Pay Date: 1/16/2007

Check #: 100011240

Employee Number: 0044

Department Number:

Social Security Number: XXX-XX-9978

Marital Status: MARRIED

Number Of Allowances: 05

Rate: 7.5000

OSMIN AVILA
510 BRANHAM LN
61
SAN JOSE, CA 95111

Hours and Earnings			
Description	Hours	This Period	Year-To-Date
REGULAR	51.00	382.50	765.75
O/TIME			5.25
BONUS1		1252.25	3297.00

Taxes and Deductions		
Description	This Period	Year-To-Date
FICA	125.06	311.20
CA DIS	9.81	24.41
ADVANCE	500.00	

Gross Pay Year To Date	Gross Pay This Period	Total Deductions This Period	Net Pay This Period
\$4,068.00	\$1,634.75	\$634.87	\$999.88